IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 03.07.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM

and

The Hon'ble Mr. Justice V.DHANAPALAN

Habeas Corpus Petition No.375 of 2006

K.Raja @ Sagaya Arokia Darmaraj ... Petitioner

Vs.

State by
1. State of Tamil Nadu
Rep.by its Secretary to Government,
Prohibition and Excise Dept.,
Fort St.George,
Chennai-9.

2. The Commissioner of Police
Greater Chennai, Egmore
Chennai -8. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records pertaining to the detenu in proceedings No.464/BDFGISV/2005 dated 20.9.2005 passed by the 2nd respondent herein and to set aside the same and direct the respondents to produce him, now detained at Central Prison, Chennai before this Hon'ble Court and to set him at liberty.

For Petitioner : Mr.S.Samuelraja Pandian
For Respondents : Mr.Babu Muthu Meeran
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

The petitioner, who is the detenu and detained as a ''Goonda" as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 20.9.2005, challenges the same in this Petition.

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2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner by taking us through the special report dated 16.9.2005 of the sponsoring authority, which is available at page No.129 of the paper book contended that in the absence of specific order of the learned Magistrate, extending remand for a period of 15 days on 18.8.2005 and 1.9.2005, i) first of all the information furnished by the sponsoring authority is factually incorrect and ii) the detaining authority without clarification or additional material acted upon and passed the detention order, which cannot stand.

4. In the light of the above contention, we verified the special report. In the special report, after referring the arrest of the detenu on 4.8.2005, the sponsoring authority has stated that by order dated 4.8.2005, learned 17th Metropolitan Magistrate, Saidapet, Chennai extended the remand till 18.8.2005 and again extended the remand by order dated 1.9.2005 and finally by order dated 15.9.2005 extended the remand for a further period of 15 days. i.e. from 15.9.2005 to 29.9.2005. Though in the order dated 15.9.2005, the detenu was produced before the learned Magistrate and his remand was extended till 29.9.2005, there is no specific order on 18.8.2005 and 1.9.2005, as claimed by the sponsoring authority in his special report dated 16.9.2005. We verified the order passed on 18.9.2005 and 1.9.2005. Learned Magistrate after recording the fact that the accused was not present, he merely adjourned the case and not extended the remand as stated in the special report. In the absence of such orders and of the fact that based on the special report, the detaining authority has passed the detention order, we are of the view that the detaining authority ought to have asked those particulars or clarified the position from the sponsoring authority. Admittedly such recourse was not adopted by the detaining authority before passing the order of detention. We are satisfied that in the absence of those particulars, the detention passed based on the incorrect information by the sponsoring authority is liable to be quashed.

5. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is quashed. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

ajr

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government,
   Prohibition and Excise Dept.,
   Fort St.George,
   Chennai-9.

2. The Commissioner of Police
   Greater Chennai, Egmore
   Chennai -8.

3. The Superintendent, Central Prison, Chennai.
   (In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order)
   Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

+ one cc to Mr.S.Samuel Raja Pandiyan, Sr.No.28266.

HPR (CO)
RSM/7.7.2006

HCP. No.375 of 2006

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